



Washington State Senate

May 7, 1997

The Honorable Gary Locke
Washington State Governor
Post Office Box 40002
Olympia, WA 98504

Re: E2SHB 1866--Environmental Excellence Agreements

Dear Governor Locke:

We request that you veto Engrossed Second Substitute House Bill 1866, An Act Relating to the establishment of voluntary programs creating environmental excellence program agreements. This legislation had its genesis in a desire to "reward" superior environmental performance with modifications in regulatory requirements, while assuring that risks to public health and environmental quality would not be increased. However, the final legislation is a **sweeping delegation of legislative authority to state agencies and local governments to rewrite environmental statutes without adequate legislative oversight, may create an uneven regulatory "playing field" among businesses, and does not have sufficient safeguards to ensure public health will not be jeopardized and that there is adequate community support for a modified regulatory requirement.**

While this legislation has been characterized as environmental "regulatory reform" by its proponents, it is in actuality the antithesis of the direction of "regulatory reform" pursued by these same interests in other legislation. E2SHB 1866 does not provide greater administrative agency adherence to the statutes from which such agencies derive their authority, as the proponents of regulatory reform have sought in many other legislative measures. Instead it **allows environmental agencies effectively to rewrite the statutes themselves through a contractual agreement with a regulated entity.** The statutes which such an agreement may supersede include virtually all of the major environmental quality laws enacted by the Washington State Legislature over the past three decades. The **legislative oversight** of such far-reaching administrative authority is **virtually nonexistent**; indeed, an amendment that would require consultation with legislative standing committees before superseding a statute in such an agreement was rejected on the Senate floor (No. 384, attached).

This legislation departs from the so-called "XL" programs at the national level and in several other states that require that the waiver or modification of regulatory requirements that apply to all businesses engaged in the same activity be allowed only where better environmental results are achieved. By comparison, E2SHB 1866 would allow such a waiver or modification **without** such environmental "excellence," where existing environmental results would be achieved through more "cost effective" measures. This provides for **special treatment to those businesses with the legal, financial and technical resources** to negotiate an agreement with the

regulatory agencies, without any provision for superior environmental performance.

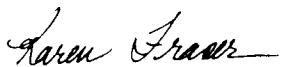
A Senate floor amendment that would have made this legislation consistent with that at the federal level and in other states was also rejected (No. 374, attached). Because of the potential that agreements waiving existing standards to allow for more "cost effective" compliance could raise competitiveness concerns with other businesses, another amendment was offered that would require that, coincident with entering the agreement, the regulatory agency take steps to make the alternative available to other businesses, including seeking legislative changes to the pertinent statutes if necessary. Again, however, this amendment was rejected (No. 383, attached).

This legislation is not only unfair to other businesses who may not have the means to pursue such an agreement with environmental agencies, but it does not ensure adequate acceptance of the community for major changes to the operation of a facility in their midst. The "stakeholder" participation element of this legislation is very weak, and does not ensure community involvement from the earliest stages of business/agency discussions, and does not require substantial community support before an agreement may be entered. Nor does it provide a means to help provide the technical expertise which stakeholders must have to be adequate participants in the negotiations over such highly complex subjects. Senate floor amendments that would have strengthened community oversight provisions of the legislation were not adopted.

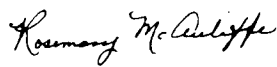
There are many other serious flaws in this legislation, including the broad exemption from compliance with the State Environmental Policy Act (SEPA), and allowing waivers of requirements under the Shoreline Management Act and the Hydraulics Act. Inclusion of the latter statutes raises the **potential that fish and wildlife habitat or shoreline access could be "traded" for reduced pollutant emissions** at a facility, a tradeoff for which there has not been adequate public debate in the legislative process.

All of these shortcomings are capable of being addressed through a broader consensus-based process involving all interests, much as the joint House/Senate legislation revising the Model Toxics Control Act, SB 7900, was the culmination of a comprehensive policy advisory committee process authorized by the 1995 legislature. We urge you to veto E2SHB 1866, and direct the Department of Ecology to convene such a committee to work toward consensus legislation for the 1998 session.

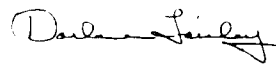
Sincerely,



Senator Karen Fraser



Senator Rosemary McAuliffe



Senator Darlene Fairley



Senator Adam Kline



Senator Pat Thibaudeau